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PPPs and Concession Projects: Issues in the Current Financial Climate

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Impacts of financial crisis on PPP projects (1)

- **Collapse of financial structures relying on monoline insurance (closed for new projects)**
- **Lack of funding (equity and debt)**
- **Greater reliance on banking market:**
 - liquidity problems
 - limited funding availability
 - higher funding costs
 - higher credit margins
- **Importance of funding through international banks and multilateral institutions (eg EIB, EBRD, World Bank)**

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Impacts of financial crisis on PPP projects (2)

- **Risk assessment**
 - Project risk
 - Country risk
 - Refinancing risk
- **Implications on VfM**
 - Projects are less likely to achieve VfM
 - Delay, cancellation or restructuring of projects in procurement phase
- **Concluded projects require refinancing**

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Legal issues

- **Procurement**
 - Projects in preparatory stage
 - Projects already published but not yet concluded
- **Contract implementation**
 - Refinancing
 - Early termination

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Procurement Issues

- **Failure to achieve VfM**
 - Right to withdraw procedure? At any stage?
 - Necessity to communicate VfM benchmark to bidders?
 - Subject to review: damages? right to have procedure reopened?
- **Equality of treatment during negotiations**
 - Preferred bidder vs competitive pressure until submission of BAFO
 - Is committed financing support required? At which stage? Escape clauses (MAC) permissible?
 - Debt funding competitions: permissible after evaluation of best bidder?
 - Limits to changes to offers after the evaluation of BAFO appointment of best bidder (see competitive dialogue procedure)
- **State aid issues in case of guarantees provided by the State?**
- **Competition law issues in case of increased number of undertakings forming part in a bidder consortium?**

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Contract implementation issues

- **Refinancing required as a consequence of contracting authority's rating**
 - Possible impact on compensation payments in cases of early termination
- **Trigger event under financing agreements / termination event under PPP/concession contract**

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Thank you for your attention!

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